Office - Supreme Court, U.S.
FILED
DEC 31 1981
ALEXANDER L. STEVAS,
CLERK

No. 81-5152

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

OMAR TAYLOR,

Petitioner,

v.

STATE OF ALABAMA,

Respondent.

On The Writ Of Certiorari To The Supreme Court of Alabama

PETITIONER'S BRIEF

ROBERT M. BENO
Counsel of Record
20 Commerce Row
529 South Perry Street
Montgomery, Alabama 36104
(205) 269-9281
Counsel for Petitioner

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D.C.

QUESTIONS PRESENTED

1. Whether or not confession taken from Petitioner following a warrantless arrest based on less than probable cause and after six hours of intermittent questioning subsequent to the arrest is admissible into evidence in light of Petitioner's rights under the Fourth Amendment of the Constitution of the United States against illegal search and seizure.

2. Whether or not fingerprints taken from Petitioner following a warrantless arrest based on less than probable cause are admissible into evidence in the light of Petitioner's rights under the Fourth Amendment of the Constitution of the United States against illegal search and seizure.

TABLE OF CONTENTS

	Page
1. Questions Presented	i
2. Table of Contents	iii
3. Citations to Opinions and Judgment Delivered in Court Below	1
4. Grounds On Which Jurisdiction Is Invoked	1
5. The Constitutional Provision Which The Case Involves	2
6. Statement of the Case	2
7. Summary of the Argument	3
8. Argument	3
9. Conclusion	9

TABLE OF AUTHORITIES

Cases:	Page
Davis v. *Mississippi*, 394 U.S. 721 (1969)	3, 4, 7
Dunaway v. *New York*, 442 U.S. 200 (1979)	3, 4, 6
Berry v. *State*, 27 Ala. App. 501, 175 So. 407 (1937)	3
U.S. v. *Dionisio*, 410 U.S. 1 (1973)	8
Silverthrone Lumber Company v. *U.S.*, 251 U.S. 385 (1920)	8
Wong Sun v. *United States*, 371 U.S. 471 (1963)	5
In Re: The Fingerprinting of M. B., 125 N.J. Super 115, 309 A. 2d (1973)	8
U.S. v. *Jennings*, 468 F. 2d 111 (9th. Cir. 1972)	8

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

No. 81-5152

OMAR TAYLOR,

Petitioner,

v.

STATE OF ALABAMA,

Respondent.

On The Writ Of Certiorari To The Supreme Court of Alabama

PETITIONER'S BRIEF

OPINIONS OF THE COURTS BELOW

1. Judgment and sentence of Trial Court (R. 173)
2. Opinion of the Court of Criminal Appeals (J.A. 25)
3. Opinion of the Supreme Court of Alabama (J.A. 37)

JURISDICTION

The Jurisdiction of this Court is invoked under Title 28 U.S.C. § 1257 (3)

The Supreme Court of Alabama denied rehearing on April 10, 1981, and reinstated the sentence of the Trial Court. Petitioner filed with the Supreme Court of the United States July 27, 1981, and Petition was granted November 2, 1981.

CONSTITUTIONAL PROVISION

1. The Fourth Amendment Provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the places to be searched and persons or things to be searched."

STATEMENT OF THE CASE

1. Petitioner was the subject of a warrantless arrest in reference to a robbery occurring December 2, 1978. The arrest was based on statements made by an alleged robbery and rape suspect awaiting trial in an unrelated crime. Petitioner was arrested, fingerprinted, photographed, placed in a lineup, and questioned. Although there was no identification at the lineup, Petitioner's prints were found to match those found at the scene of the crime on objects held by one of the robbers. Petitioner was confronted with the fingerprints, and questioned until some six hours after the initial arrest a confession was obtained.

2. At all stages of the proceeding, Petitioner objected to and moved for exclusion and suppression of the before mentioned fingerprints and confession. The same being denied.

3. On May 27, 1980, the Court of Criminal Appeals for the State of Alabama reversed.

4. On February 27, 1981, the Supreme Court of Alabama reversed and denied the application for rehearing on April 10, 1981.

5. Appointed Counsel misread or misunderstood the time allowed for filing in the Supreme Court of the United States, but upon realizing that the time period for filing was not jurisdictional and because of the nature of the case and obvious error, filed the Petition on July 27, 1981. On November 2, 1981, the Supreme Court of the United States accepted the writ.

SUMMARY OF ARGUMENT

Petitioner's argument hinges on the Courts holding in Davis v. Mississippi, 394 U.S. 721 (1969), and Dunaway v. New York, 442 U.S. 200 (1979), both of which deal with illegal arrests and the "Fruit of the Poisonous Tree."

Petition alleges clear Fourth Amendment violations in reference to the fingerprints taken shortly after arrest, and the confession which followed six hours after the initial warrantless arrest. Both flow directly from the arrest without circumstances which can be held to attenuate the taint.

Therefore, Petitioner argues that in the absence of any evidence to the contrary his conviction should be reversed.

ARGUMENT

1. Whether or not a confession taken from Petitioner following a warrantless arrest based on less than probable cause and based on six hours of intermittent questioning subsequent to the arrest is admissible into evidence in light of Petitioner's rights under the Fourth Amendment of the Constitution against illegal search and seizure.

This case presents two clear questions of constitutional significance under the Fourth Amendment of the United States. The facts demonstrate clearly that the arrest of Petitioner was without probable cause, in that it was based solely on the uncorroborated statement of a jailed and alleged rape and robbery suspect, one Charles Martin. (R. 5). Martin's source was never developed, nor could he give officer Mobley any information which would give credibility to his statements. An arrest based on mere suspicion will not afford justification for an arrest, unless the information derived from a credible source or person presumed to know the facts which, if submitted to the proper authority, would require issuance of a warrant for arrest. Berry v. State, 27 Ala. App. 501, 175 So. 407 (1937). In the present case there were insufficient facts for issuance of a

warrant. Petitioner submits that the government authorities knew the same, and began the investigation independently and without legal authority. The investigatory exploration was detailed and with specific design. Following the arrest, Petitioner was questioned on at least three occasions, fingerprinted, placed in a lineup, photographed and permitted to converse with acquaintances. The fingerprinting falls clearly within the holding of Davis v. Mississippi, 394 U.S. 721 (1969). The Trial Court recognized the same. (R. 106). Nevertheless, Petitioner remained at the Police Station, under complete and total control of the police until he confessed. (R. 128).

The case is strikingly similar to Dunaway v. New York, 442 U.S. 200 (1979), where a New York Detective questioned an inmate, whose statements implicated Dunaway in an attempted robbery and homicide, and he was subsequently arrested sans a warrant. There the Court Held:

> 1. The Rochester police violated the Fourth Amendment and the Fourteenth Amendment when without probable cause to arrest, they seized Petitioner and transported him to the police station for investigation.
>
> (a) Petitioner was "seized" in the Fourth Amendment sense when he was taken involuntarily to the police station, the State concedes that the police lacked probable cause to arrest him before his incriminating statement during interrogation.

Petitioner in the case at bar submits that the police equipped with prints illegally obtained, secured a warrant which was void ab initio, and continued their design to coerce Petitioner's confession. Again it must be kept in mind the Trial Court ruled those prints illegal. (R. 106). Continuing, the Court in Dunaway stated:

> (b) Terry V. Ohio, 392 U.S. 1, which held that limited "stop and frisk" searches for weapons are so substantially less intrusive than arrests that the general rule requiring probable cause to make Fourth Amendment "sei-

zures" reasonable can be replaced by a test balancing the limited violation of the individual privacy against the opposing interest in crime prevention and detection and in police officer's safety, and the Terry case's progeny, do not support the application of a balancing test so as to hold that "seizures" such as that in this case may be justified by mere "reasonable suspicion." The narrow intrusions in Terry and its progeny were judged by a balancing test rather than the general rule requiring probable cause only because those intrusions fell so far short of the kind of intrusions associated with an arrest. For all but those narrowly defined intrusions, the requisite balancing test has been performed in centuries of precedent and is embodied in the principle that seizures are reasonable only if supported by probable cause.

(c) The treatment of Petitioner, whether or not technically characterized as an arrest, was in important respects indistinguishable from a traditional arrest and must be supported by probable cause. Detention for custodial interrogation — regardless of its label — intrudes so severely on the interests protected by the Fourth Amendment as necessarily to trigger the traditional safeguards against illegal arrest. Cf. Davis v. Mississippi, 394 U.S. 721; Brown v. Illinois, supra.

It is clear that the Trial Court, while refusing to suppress the confession, did find the arrest illegal by sustaining counsel's objection to the admission of the fingerprints taken subsequent to the arrest, even though it permitted the reprinting of Petitioner at trial. (R. 106). Assuming, arguendo, the arrest to be illegal, does suppression of the confession follow. This brings us to attenuation. It must be asked whether or not the unconstitutional police conduct leading to Petitioner's confession had been sufficiently attenuated so as to make his confession admissible against him at trial. Wong Sun v. United States, 371 U.S. 471 (1963).

Petitioner does not deny Miranda warnings were given. He submits they were continuously given up to receipt of his

confession, and although he explained his understandings of his signature, (R. 46), for the purpose of this argument we will assume the confession voluntary under the Fifth Amendment. Even so, Dunaway v. New York, supra, stands for the proposition:

> (a) Even though the proper Miranda warnings may have been given and Petitioner's statements may have been "voluntary" for purposes of the Fifth Amendment, "[T]he exclusionary rule, . . . when utilized to effectuate the Fourth Amendment, serves interests and policies that are distinct from those it serves under the Fifth." Brown v. Illinois, supra, at 601. While a confession after proper Miranda warnings may be voluntary for Fifth Amendment purposes, this type of "voluntariness" is merely a threshold requirement for the Fourth Amendment analysis.
>
> (b) Under the Fourth Amendment analysis, which focuses on "the causal connection between the illegality and the confession," Brown v. Illinois, supra, at 603, factors to be considered in determining whether the confession is obtained by exploitation of an illegal arrest include: The temporal proximity of the arrest and the confession, the presence of intervening circumstances, and, particularly, the purpose and flagrancy of the official misconduct. Here, Petitioner was admittedly seized without probable cause in hope that something might turn up, and confessed without any intervening event of significance. Cf. Brown v. Illinois, supra.

Petitioner calls the Court's attention to its comment in Dunaway in reference to the purpose and flagrancy of the official misconduct. At the time of the arrest, there was nothing more than Mr. Martin's statement to go on, but acting without the law and with specific design Petitioner was arrested in hopes that something might turn up, and after the fingerprints were matched the officers began to use them as leverage toward their final goal. (R. 27, 36, 40, 49, 51). In addition to the illegal arrest and fingerprinting, police attempted to have Petitioner identified

through use of a lineup and photographs. Finally, they brought in Petitioner's girlfriend and another man, Charles Williams, known not only to Petitioner, but also to the police. (R. 51, 52, 53).

The interesting thing about Respondent's position is the weight he has put on Petitioner's conversation with Charles Williams and the girl. It is foolish to argue that the police did not have total control of Petitioner and his activities from the moment of his arrest to the time the confession was obtained. Charles Williams may well have been an informant, although that was not developed. The State has no facts to argue attenuation. The facts clearly show the flagrant and abusive conduct of the police in obtaining the confession and request the relief of this most Honorable Court.

II. Whether or not fingerprints taken from Petitioner following a warrantless arrest based on less than probable cause are admissible into evidence in light of Petitioner's rights under the Fourth Amendment of the Constitution against illegal search and seizure.

This issue presents itself because the Trial Court after ruling the prints taken subsequent to the arrest were inadmissible, permitted Petitioner's prints to be made at Trial for consideration by the trier of fact. In ruling to exclude the prints taken subsequent to the arrest, the Trial Court followed the ruling of Davis v. Mississippi, supra, where it was made clear that illegally obtained evidence is admissible at a criminal trial, however relevant and trustworthy the seized evidence may be as an item of proof. Petitioner agrees that any other ruling would open the door to carte blanche intrusions upon the rights of the innocent citizens subjected to involuntary detention on less than probable cause. The holding in Davis, supra, represents the true purpose of the Fourth Amendment.

The Court in Davis, indicated that only under, "narrowly defined circumstances", could such intrusions as found in

Davis be permitted. As in Davis, the government took no such steps in the present case.

Respondent has argued previously that any such intrusion was corrected at trial by taking fresh prints. His argument having been under the ruling of U.S. v. Dionisio, 410 U.S. 1 (1973), that the formerly tainted prints could somehow be purged of illegality. Petitioner would point out that the government in Dionisio may have evidenced one of those narrowly defined circumstances suggested in Davis. The present fact situation is analogous to Silverthrone Lumber Company v. United States, 251 U.S. 385 (1920), when the Court as per Judge Holmes declared:

> "The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the Court but it shall not be used at all. Of course this does not mean that the facts thus obtained become sacred and inaccessible. If knowledge of them is gained from an independent source they may be proved like any others, but the knowledge gained by the Government's own wrong cannot be used by it in the way proposed.

I point out that the Petitioner had no prior record known to the police, nor evidence of previous prints in existence. (R. 134). Petitioner submits that, but for the discovery of his prints by way of this arrest, the government had no prior knowledge or means of knowing Petitioner's culpability. Petitioner freely admits that had the procedure in Dionisio been used or as used in, In Re The Fingerprinting of M. B., 125 Super 115, 309 A. 2d (1979), his basis for appeal may not have existed. However, in the present case the same was not, and the law is clear in Reading Silverthrone, that the government must act in accordance with the proper procedures as prescribed by law or fail. The 9th Circuit in the U.S. v. Jennings, 468 F. 2d 111 (9th Cir. 1972) clearly represents as does the present case, that prints illegally seized without probable cause cannot be used as evidence at trial, again reference to Davis.

Petitioner suggests the need for exclusion and suppression of the fingerprints, since the method used in the present case are completely without legal authority and must be dismissed from consideration by the trier of fact. Petitioner therefore humbly requests the Court's exclusion of the same.

CONCLUSION

The evidence clearly shows that Petitioner was illegally arrested by the government. The arrest was with specific design and its flagrancy is well documented.

As a result, Petitioner humbly requests of this Court that the confession and prints previously received be hereby excluded as evidence.

Respectfully submitted,

ROBERT M. BENO
Counsel for Defendant